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IN THE

Supreme Court of the United States

No. 577

MRS. LYDIA SANDOZ HASSAN, Administratrix
of the Estate of Owen J. Sandoz,
Petitioner,

versus

A. M. LANDRY & SON, INC. and
THE TRAVELERS INS. CO.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To The Honorables The Chief Justice and The Associate Justices of The Supreme Court of The United States:

Mrs. Lydia Sandoz Hassan herewith respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered in this cause on July 26, 1963 and issued as mandate on September 24, 1963, affirming a summary judgment dismissing petitioner's claims for damages against the respondent herein.

OPINIONS BELOW

The District Court did not render an opinion; the minute entry of its judgment is copied in full in Appendix A. The opinion of the Court of Appeals for the Fifth Circuit, comprising Appendix B, is reported in 321 F. 2d 570 (5th Cir. 1963).

JURISDICTION

This matter involves the interpretation and application of the Jones Act, 28 U.S.C. §688. The judgment of the Court of Appeals for the Fifth Circuit was entered on July 26, 1963. The jurisdiction of this Honorable Court is envoked under Section 1254 (1) of Title 28 of the United States Code.

THE QUESTION PRESENTED

Petitioner's application for certiorari presents a single question of law:

May a party who is not the duly authorized personal representative of a deceased employee settle and compromise a claim for the employee's wrongful death under the Jones Act and grant a valid release of all liability arising from the wrongful death?

STATEMENT OF THE CASE

Owen J. Sandoz, the decedent herein, was fatally injured on June 1, 1958, when a helicopter which was transporting him to work in offshore drilling operations

crashed in the Gulf of Mexico. The mother of the decedent, the petitioner herein, was appointed administratrix and as personal representative of his estate brought suit under the Jones Act for the wrongful death of her son.

The respondent herein, the employer of the decedent, moved for a summary judgment on the ground that the decedent's "common law wife," individually and as tutrix of the decedent's children, had settled and compromised all claims for wrongful death and had given a full and valid release to the respondents.

The District Court granted the respondent's motion and dismissed the petitioner's suit. The Court of Appeals for the Fifth Circuit affirmed the Judgment of the lower court on July 26, 1963.

For the reasons hereinafter set forth, petitioner applies for a writ of certiorari to review the judgment and opinion below to the end that petitioner's cause of action for damages may be reinstated and remanded to the District Court for trial on its merits.

REASONS FOR GRANTING THE WRIT

In the instant case the Court of Appeals for the Fifth Circuit has allowed a party other than the duly appointed personal representative of a deceased employee to compromise and settle a claim for wrongful death arising under the Jones Act and to release all liability arising as a result of the wrongful death.

This holding, we submit, is in direct conflict with both

the letter and spirit of the Jones Act; and it creates uncertainty as to who may grant a valid release and inhibits the settlement and compromise of such claims under the Jones Act as well as other federal acts which use similar terminology.

Lower Court's Opinion Conflicts with the Letter and Spirit of the Jones Act

The Jones Act clearly and expressly designates the proper party to bring an action for the wrongful death of a seaman. This Act provides that "in case of the death of any seaman as a result of any such personal injury the *personal representative* of such seaman may maintain an action for damages at law with the right of trial by jury". 46 U.S.C. § 688. The courts have interpreted the phrase "personal representative" to mean an administrator. *Marshall v. N.Y. Central*, 218 F. 2d 900, 906 (1955); *O'Neill v. Cunard White Star Ltd.*, 69 F. Supp. 943 (1946).

No other party is designated by the Jones Act to bring an action for the wrongful death of a seaman. Only the personal representative, the administrator, of the decedent's estate is named by the Act and the Courts have held that only he can bring an action for wrongful death under the Jones Act. No other party, not even the beneficiaries of the deceased, may bring such an action. *Fornaris v. American Surety Co. of New York*, 183 F. Supp. 339 (1960).

Inasmuch as the personal representative of the estate is the only party who can bring a suit under the Jones Act for wrongful death, he should be the only party competent and capable of settling such a suit and granting a release for

claims arising as a result of a wrongful death. If a party who is not competent to file a claim is permitted to settle the claim and terminate the matter, the authority of the administrator to file and prosecute such a suit would be debilitated and undermined if not completely destroyed. And the provision of the Jones Act designating the personal representative as the only party competent to file a claim for wrongful death would be rendered meaningless.

This result could have a direct effect on the rights of the decedent's beneficiaries, the protection of whom was a major objective (behind the enactment) of the Jones Act. The administratrix was appointed by a competent court; she is a trustee of *all* the beneficiaries and, as such, is held to a high standard of loyalty and trust. See *Rowston, administratrix v. Norton Co.*, 180 F. Supp. 803 (1960). For these reasons she is the only party designated by the Act to file suit. For the same reasons she should be the only party capable of settling a claim under this Act. As a result of the decision in the instant case, however, anyone who has an interest in the matter, even though this party is not competent to file suit, and even though he is not in a fiduciary relationship to all the beneficiaries, may terminate the matter and release all claims arising from the wrongful death. Such a result is in direct conflict with the letter and spirit of the Jones Act.

The result below, summarily holding the release valid, may cause pretermission of other important law and fact questions.[1]

The Importance of the Question Presented

The question of who may settle a claim under the Jones Act for wrongful death and grant releases for this claim is of grave importance. The instant case, in allowing someone other than the personal representative of the estate to accomplish this function, creates uncertainty as to who may give a valid release.

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[1]The party in the instant case who settled the Jones Act claims for wrongful death and granted releases for these claims was the "common law" wife of the decedent. The lower court takes the position that this party is a beneficiary under the Jones Act: "If the plaintiff as administratrix is entitled to recover under the Jones Act her recovery would not be on behalf of the estate but solely as trustee for the designated survivors, that is in this case, the *widow* and minor children". Hassan v. A. M. Landry & Son, Inc. 321 F. 2d 570, 571 (5th Cir. 1963) (Emphasis added). Thus the court below has interpreted the word "widow" in the Act to encompass a "common law wife". If the law of Louisiana does not recognize a common law wife as a wife, then does the Court below in its interpretation of the term "widow" in the Jones Act adhere to the law of Louisiana? La. Rev. Stat. of 1950, 14:79.1 is such determination independently of the domestic relations law of a state, in interpretating the Jones Act, in opposition to the recent decision of *Bell v. Tug Shrike*, 215 F. Supp. 377 (E.D. Virg. 1963), wherein a Federal court in Virginia held that in interpreting the word "widow" in the Jones Act "the federal courts are to look to the domestic relations laws of the states"? Is this a conflict between courts in different circuits? Can one person's rights be terminated through a release granted by another who is not vested with the cause of action and who may have no interest therein?

Can an administratrix grant a valid release? Can a beneficiary accomplish this same fete? Can a party who is neither an administratrix nor a beneficiary grant a valid release? All of these questions are generated by the opinion of the lower court in the instant case. Their presence enshrouds the whole area of settlement with a thick fog of uncertainty. Such an atmosphere can only inhibit the progress of litigation under the Jones Act as well as other federal acts which use similar terminology and can stifle settlements. Such a result will cause inequities for the litigants and crowded dockets for the courts. Since this Honorable Court has not spoken on this subject it is in the public interest that the problems presented by this application be resolved.

CONCLUSION

For the foregoing reasons, petitioner Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit and that, after due proceedings had, the judgment of that Court may be reviewed and reversed, to the end that petitioner's claim for damages shall be reinstated and remanded to the District Court for trial on its merits.

Respectfully submitted.

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New Orleans, Louisiana

Of Counsel:
Kierr and Gainsburgh
Eldon E. Fallon

CERTIFICATE OF SERVICE

I, Raymond H. Kierr, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day served upon the respondent herein a copy of the attached application for certiorari with its appendices, by depositing the same in the United States mails, postage prepaid at New Orleans, Louisiana addressed to George Denegre Esq. and Donald L. King Esq., 210 Baronne Street, New Orleans 12, Louisiana, this 22nd day of October, 1963.

Raymond H. Kierr.

APPENDIX A

HEARING ON MOTION OF PLAINTIFF TO RECONSIDER DEFENDANT'S MOTION FOR DISMISSAL AND TO VACATE JUDGMENT OF DISMISSAL

Filed: January 3, 1962

MINUTE ENTRY

December 27, 1961 JUDGE CHRISTENBERRY

This cause came on for hearing this day on motion of Plaintiff to reconsider Defendant's motion for dismissal and to vacate judgment of dismissal.

PRESENT: Raymond H. Kierr, Esq.,
Attorney for Plaintiff

Donald L. King, Esq.,
Attorney for Defendants

Argument:

IT IS ORDERED that the motion of Plaintiff to reconsider Defendant's motion for dismissal be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the motion of Plaintiff to vacate Judgment of Dismissal be, and the same hereby, DENIED.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19641

MRS. LYDIA SANDOZ HASSAN, Administratrix of the Estate of OWEN J. SANDOZ, Deceased,
Appellant,

versus

A. M. LANDRY & SON, INC., and THE TRAVELERS INSURANCE COMPANY,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(July 26, 1963.)

Before RIVES, LEWIS,* and BELL, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a judgment sustaining the defendants' motion to dismiss or in the alternative for summary judgment. The complaint was filed by Mrs. Lydia Sandoz Hassan, as administratrix of her de-

* Of the Tenth Circuit, sitting by designation.

ceased son, Owen J. Sandoz, against A. M. Landry & Son, Inc., his employer at the time of his death, and its insurer Travelers. According to the complaint, the decedent lost his life on June 1, 1958 as the result of the crash landing of a helicopter in the Gulf of Mexico, while he was being transported to his vessel. The complaint was filed May 31, 1961, nearly three years from the date of decedent's death. It alleged that the decedent is survived by the plaintiff, his mother; by three minor children and their mother, his wife; and by two other minor children of the decedent's wife "with regard to whom decedent stood in *loco parentis*." It sought damages in the sum of $250,000.00 allegedly "under the Jones Act and also under the General Maritime Law and the Death on the High Seas Act, insofar as the latter are applicable."

By their motion to dismiss the defendants correctly pointed out: (1) that the General Maritime Law does not recognize an action for wrongful death;[1] (2) that any action under the Death on the High Seas Act is barred by the two-year statute of limitations.[2]

On appeal the plaintiff urges her claim solely as under the Jones Act, 46 U.S.C.A. §688, et seq. Under that Act and the provisions of the Federal Employers Liability Act,[3] which it adopts by reference, the recovery for the death of an employee is for the benefit of the surviving widow and children of the employee, if any, to the exclusion of his

[1] Lindgren v. United States, 1930, 281 U.S. 38; Metcalf v. The Alaska, 1889, 130 U.S. 201; Lewis v. Rickardo (The Harrisburg), 1886, 119 U.S. 199.

[2] 46 U.S.C.A. §763.

[3] 45 U.S.C.A. §51, et seq.

parents or other beneficiaries. 45 U.S.C.A §51, §59. *CB&Q R. Co. v. Wells-Dickey Trust Co., Administrator*, 275 U.S. 161, 163; *Wade, as Administratrix, v. Rogala*, 3 Cir. 1959, 270 F.2d 280. If the plaintiff as administratrix is entitled to recovery under the Jones Act, her recovery would not be on behalf of the estate but solely as trustee for the designated survivors, that is in this case, the widow and minor children. *Lindgren v. United States*, 1930, 281 U.S. 38.

The motion for summary judgment set up that the widow individually and as tutrix of the children had settled and compromised all claims for wrongful death by authority of a court judgment and had given a full and complete release to the defendants. Attached to the motion as exhibits were copies of the petition of the widow, as the duly qualified natural tutrix of the minor children, to the 27th Judicial District Court for the Parish of St. Landry, Louisiana, seeking authority to make a full and complete settlement. The widow waived any claims on her own behalf and the settlement was made on behalf of the minor children for the total sum of $46,960.00, allocated to the respective minors. Also attached to the motion for summary judgment was a copy of the judgment of said court approving the settlement and providing that upon receipt of the amount specified "A. M. Landry & Son, Inc. and Travelers Insurance Company be and they are hereby discharged from any and all further liability, responsibility and claims whatsoever which may or might be made against them as a result of the accident and death of the said Owen James Sandoz under the Compensation Laws of the State of Louisiana, the general tort laws of the State of Louisiana, or any other law whatsoever." Attached also was a release by the wid-

ow in the form of an authentic act under the laws of Louisiana.

There was further attached as an exhibit to the motion for summary judgment a copy of proceedings had on the same day, June 1, 1959, before the same court, in which the plaintiff in the present action, the mother of the decedent and the administratrix of his estate, joined the widow in petitioning the court to approve settlement on behalf of the minors and by the administratrix against various parties, not including the defendants in the present case, for any matters arising out of the injury to and death of Owen J. Sandoz, deceased, for the total sum of $50,000.00. Attached also was a copy of the judgment of that court approving the settlement and authorizing the execution of the release and also the release signed by the widow and natural tutrix of the minors and by Lydia Sandoz Hassan, individually and as administratrix of the Estate of Owen J. Sandoz.

It thus clearly appears that, with the active cooperation of the present plaintiff, the widow of the decedent, individually and as tutrix of his minor children, with court approval, has settled, or at least attempted to settle, any claim for his wrongful death which might have existed under the Jones Act. *Civil v. Waterman SS Corp.*, 2 Cir. 1954, 217 F.2d 94; *Larry v. Chicago, B&Q R. Co.*, E.D. Mo., 1947, 74 F.Supp. 798.

The only question remaining is the validity of that settlement. The exhibits attached to the motion to dismiss disclose that Zurich Insurance Company, as the insurer of Humble Oil Company, had agreed to pay to the minor chil-

dren of the decedent $50,000.00, and provided that Travelers Insurance Company and A. M. Landry & Sons, Inc., were entitled to receive, by way of subrogation, out of said $50,000.00, the amounts paid by them to said minor children, and further that, in addition to the amount reimbursed by Zurich's insurance, Travelers was paying a total of $1,960.00. The Louisiana Court in approving the settlement ordered: "that all of the amounts paid to the said minors as hereinabove set forth out of the money paid by Zurich Insurance Company, as the insurer of Humble Oil Company, is hereby credited to the amount due by Travelers Insurance Company as set forth in the compromise settlement presented herein . . . ." The plaintiffs introduced no evidence to show that this was error or that Travelers was not so entitled to be subrogated.

The exhibits further disclosed that the three minor children of the decedent and his wife were born out of wedlock, and that the two other minor children of the wife "with regard to whom decedent stood in *loco parentis*" were born of a previous marriage "subsequently" terminated by divorce. Those facts appear to us immaterial because illegitimate children qualify as beneficiaries under the Jones Act. *Civil v. Waterman SS Corp., supra*, 217 F.2d 98.

The validity of the settlement is not attacked as fraudulent or in any other way except in the particulars which have been mentioned. The settlement having been fully and explicitly described to the Louisiana court and having received that court's approval, we think that it meets even the careful scrutiny to which settlements and releases under the Jones Act must be subjected. See *Garrett v. Moore-McCormack Co.*, 1942, 317 U.S. 239, 248.

The defendants sustained their burden of showing the absence of any genuine issue as to the material facts, and no countervailing evidence having been offered by the plaintiff, summary judgment was properly entered: See 6 Moore's Federal Practice, §56.15(3), p. 2129. The judgment is

AFFIRMED.